

EXHIBIT H

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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Court order in 2007-1457
Epistar v. ITC

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NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-1457

EPISTAR CORPORATION,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

and

PHILIPS LUMILEDS LIGHTING COMPANY, LLC,

Intervenor.

ON MOTION

Before RADER, SCHALL, and BRYSON, Circuit Judges.

BRYSON, Circuit Judge.

ORDER

Epistar Corporation moves for a stay, pending appeal, of the limited exclusion order (LEO) issued by the International Trade Commission (ITC). The ITC and Philips Lumileds Lighting Company, LLC (Lumileds) each oppose. Epistar replies. We treat Epistar's motion for leave to file an overlong Fed. R. App. P. 28(j) letter as a motion for leave to notify the court of the ITC's order denying Epistar's motion for a stay pending

appeal.* Lumileds responds. The ITC moves to strike Epistar's notification. Epistar replies.

Lumileds filed a complaint in the ITC asserting a violation of 19 U.S.C. § 1337 by the importation into the United States, the sale for importation, and the sale within the United States after importation, of certain light emitting diodes that Lumileds contended infringed one or more of Lumileds' patents. The ITC instituted an investigation naming Epistar as the respondent. Epistar sought to assert an invalidity defense. However, the Administrative Law Judge determined that by virtue of an earlier consent judgment and settlement agreement entered into by another company, United Epitaxy Company, that subsequently merged with Epistar, Epistar was barred from asserting that Lumileds' patent was invalid. The ITC determined that Epistar's products infringe one of Lumileds' patents and entered a LEO. Epistar seeks a stay, pending appeal, of the LEO.

To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor. Hilton v. Braunskill, 481 U.S. 770, 778 (1987). In deciding whether to grant a stay, pending appeal, this court "assesses the movant's chances for success on appeal and weighs the equities as they affect the parties and the public." E. I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 835 F.2d 277, 278 (Fed. Cir. 1987). See also Standard Havens Prods. v. Gencor Indus., 897 F.2d 511 (Fed. Cir. 1990).

* Rule 28(j) applies when the briefing of an appeal is completed. Because briefing in this appeal is not completed, rule 28(j) is inapplicable and we treat Epistar's submission as notification of the ITC decision.

Based upon our review of the parties' submissions, and without prejudicing the ultimate determination of this case by a merits panel, we determine that Epistar has not met its burden to obtain a stay of the LEO, pending appeal.

Accordingly,

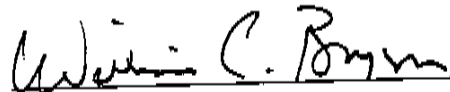
IT IS ORDERED THAT:

- (1) Epistar's motion for a stay, pending appeal, is denied.
- (2) Epistar's motion to notify the court of the ITC's order is granted.
- (3) The ITC's motion to strike Epistar's notification is denied.

FOR THE COURT

SEP 28 2007

Date



William C. Bryson
Circuit Judge

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THE FEDERAL CIRCUIT

SEP 28 2007

JAN HORBALY
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cc: Thomas C. Goldstein, Esq.
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